IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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O R D E R

Kishan Lal Mathur vs. State of Raj. Ors.

S.B. CIVIL WRIT PETITION NO.4644/2002 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER : 26th July, 2006

PRESENT
HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.S.K. Malik, Advocate for Mr. Sanjay Mathur, Advocate, for the petitioner.
Mr.Rameshwar Dave, Dy. Government Advocate for the respondents.

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BY THE COURT: -

REPORTABLE

This writ petition was filed by the petitioner with the prayer that respondents be directed to immediately release all his retrial benefits and salary for the suspension period with interest @ 18% per annum.

The petitioner was retired from service of the respondents on 30.6.1997. He thereafter made number of representations to the respondents for

grant of retrial benefits. The respondents, however, made payment of his retiral dues during the pendency of the writ petition. The petitioner has filed an additional affidavit with which he has placed on record a Chart giving the dates on which the payments were actually made to him. There are in all 9 heads in the said chart in which it has been mentioned that on which dates the payment was made but most of the payments were made to the petitioner in the year 2003 and 2004.

The learned counsel for the petitioner has argued that this being the case of retired Government servant, it was expected of the respondents to finalize the pension case of the petitioner for payment of retrial benefits and make payment immediately after his retirement. He has therefore, prayed that the respondents be directed to pay interest on delayed payment of all his retiral dues @ 18% per annum.

Learned counsel for the petitioner relied upon the judgment of this Court in Jai Kishan Vs. State of Rajasthan & Ors reported in 2003 WLC (Raj.) UC 262 wherein for delayed payment of retiral

benefits, this Court awarded interest @ 18% per annum. Learned counsel for the petitioner also relied upon the judgment of this Court on the delayed payment of retrial benefits in Jagdish Prasad Nag Vs. State of Rajasthan & Ors reported in 2004 WLC (Raj.) UC 520 in which also, this Court allowed interest @ 12% per annum.

The Government of Rajasthan vide notification dated 7.6.2004 in exercise of its powers conferred by sub-rule (1) of the Rules of 1989 of the Rajasthan Civil Services (Pension) Rules, 1996 by substituting earlier sub-rule (1) provided that in the event of delay in payment of retrial benefits after 60 days from the date such payments become due and if it was established that delay was not caused on account of failure on the part of the Government servant then interest @ 9% per annum from the date retrial benefits become due, would be payable till the end of the month preceding the month in which payment of such dues are authorized. For the purpose of facility of reference, sub-rule (1) of Rules of 1989 of Rajasthan Civil Services (Pension) Rules, 1996 is extracted as under: -

> "If the payment of retrial benefits has been authorised after 60 days from the date when its payment became due, and it is established that the delay in payment ws not on account of failure on the part of the Government servant in compliance of the procedure laid down in this chapter or elsewhere in these rules,interest @ 9% per annum from the date retiral benefits become due would be payable till the end of the month preceding the month in which the retiral benefits are authorised."

On the other hand, Shri Rameshwar Dave,learned Dy. Government Advocate argued that once when payment of retiral dues have actually been made to the petitioner, the petition should not be entertained merely for grant of interest. He argued that the aforesaid rules may have undergone a change by now because of lapse of time and reduction in the interest rate of the banks.

Earlier sub-rule (1) of the Rules of 1989 provided for payment of interest @ 12% per annum but substituted rule referred to above, provided for interest @ 9% per annum. In my considered view, when the respondents have not come out with any explanation as to why payment of retrial/terminal benefits of the petitioner was

not made in time and they have also not taken a stand that delay in making such payment was caused on account of any fault on the part of the petitioner, the petitioner certainly becomes entitled to payment of interest. When delay has been caused on the account of fault of the respondents alone and the same cannot in any manner be attributed to the petitioner, the respondents cannot escape from their liability to make payment of interest as prescribed by rule 89 (1) (supra).

In view of the above, the writ petition is disposed of with the direction to the respondents to pay interest to the petitioner @ 9% per annum for the period of delay in making retiral benefits. This interest be paid from the date of retirement i.e., 30.6.1997 till the actual date of making payment of retiral dues. Compliance of the order be made within a period of two months from the date of receipt of copy of this order.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-